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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,015	10/03/2001	Paul Vegliante	2112-342.1 US	2684

7590 01/11/2005

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EXAMINER

HAMILTON, ISAAC N

ART UNIT PAPER NUMBER

3724

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/970,015

Applicant(s)

VEGLIANTE ET AL.

Examiner

Isaac N Hamilton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-7,11-14,16-23,35-40 and 42-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,11-14,16-23,35-40 and 42-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/17/2004</u> | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Drawings***

1. The drawings were received on 09/17/2004. These drawings are acceptable.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 35 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 35 recites the limitation "said rails" in line 5. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-7, 11-17, 20-23, 35-40 and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas. Lucas discloses everything as noted in Diagram 1, and discloses cling properties in column 3, line 8; channel 13; bottom edge of upper portion of blade housing protrudes on either side of blade in figure 3; end surface of upper portion is rounded and inclined upward as shown in figure 2; tracking device 34; tubular base 31; channel has tubular shape as shown in figure 3; Lucas does not disclose materials having hardness in the shore A range; that

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are non-porous; that are smooth; made of rigid PVC, acetal, silicon, plastic, rubber, acrylic, polyvinyl chloride comprising at least %10 plasticizer, silicon elastimer, and combinations thereof; and being flexible. It would have been obvious to one of ordinary skill in the art to provide the elements mentioned above for the purpose of making the apparatus in Lucas more durable for re-use. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Note in claims 7, 38 and 39 that coextrusion is a process that is well known in the manufacturing of the materials mentioned above.

6. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas as applied to claim 1, and further in view of Keene et al (3,277,760), hereafter Keene. Lucas discloses channel 13; pair of rails, upper section and lower section shown in Diagram 1 below. Lucas does not disclose a protrusion and does not disclose a blade housing that snap fits into a protrusion. However, Keene teaches protrusion 18, 29, 40, and discloses blade housing 40 that snap fits into the protrusion. It would have been obvious to provide a blade housing that snap fits into a protrusion in Lucas as taught by Keene in order to prevent the blade housing from sliding out of the elongated rail base.

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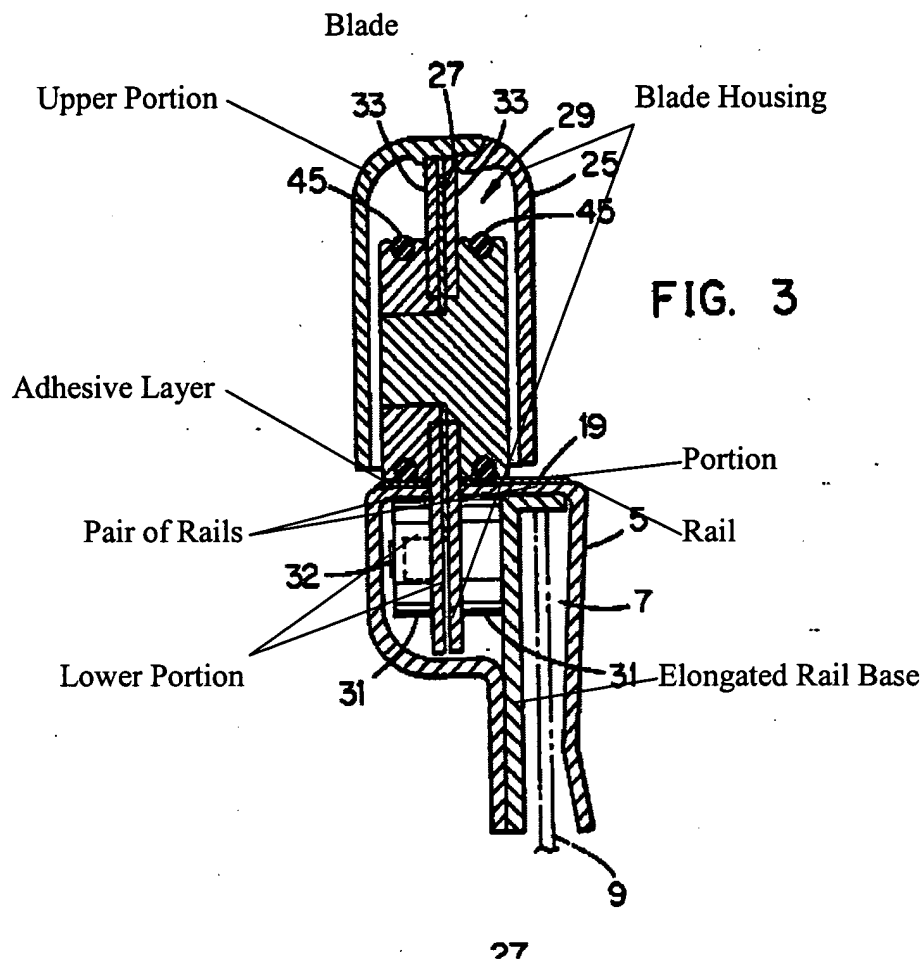


Diagram 1. Figure 3 in Lucas.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-7, 11-23, 35-40 and 42-44 have been considered but are moot in view of the new ground(s) of rejection. This includes the Declaration of Mr. Paul Vegliante.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 571-272-4509. The examiner can normally be reached on Monday thru Friday between 8am and 5pm. If attempts to

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reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9306.

  
IH

January 10, 2005



Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700